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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,873	03/06/2002	Daniel R. Potter	005127.59792	9984

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EXAMINER

STASHICK, ANTHONY D

ART UNIT PAPER NUMBER

3728

DATE MAILED: 02/09/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/092,873	Applicant(s) POTTER ET AL.	
	Examiner Anthony Stashick	Art Unit 3728	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2004, the RCE filed.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-57 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 55 and 56 is/are allowed.
- 6) ☒ Claim(s) 35,37,38,40,44-50,52,53 and 57 is/are rejected.
- 7) ☒ Claim(s) 36,39,41-43,51,54 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 06 March 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on November 19, 2004 has been entered.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 35, 37, 40, 45-47, 50 and 52 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed 2,677,906. Reed '906 discloses all the limitations of the claims including the following: first chamber (formed by 16, 17) formed of a first barrier material; the first chamber being sealed to enclose a first fluid (see Figures 2, 6 and 7); a second chamber 21 formed of a second barrier material 18 that is different than the first barrier material; the second chamber being sealed to enclose a second fluid (see Figures 2, 6 and 7); the second chamber being at least partially located within the first chamber (see Figure 2); at least one of the second barrier material, the second fluid, and a pressure of the second chamber being selected such that the second fluid transfers into the first chamber to increase a pressure of the first chamber and

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decrease the pressure of the second chamber (enough pressure placed on second chamber that seal between that chamber and the first chamber breaks); the second barrier material is structured to release the second fluid to the first chamber by fatigue failure of the second barrier material (see Figures 2, 6 and 7); the second chamber releases the second fluid to the first chamber by manual actuation of the second chamber (second chamber breaks under enough pressure); at least one of the first chamber and the second chamber includes a gas-filled member (second chambers located in first chamber are filled with gas); the gas-filled member includes a barrier member that ruptures in response to an application of a predetermined pressure (as noted with second chamber above); a fluid pressure within the gas-filled member is greater than the pressure of the second chamber (see col. 2, line 60 through col. 3, line 2); the pressure of the second chamber being greater than a pressure of the first chamber (see col. 2, line 60-col. 3, line 2); the second fluid and the second barrier material being selected such that at least a portion of the second fluid diffuses from the second chamber to the first chamber to increase the pressure of the first chamber and decrease a pressure of the second chamber (when enough pressure is placed on the second chamber it will break and diffuse into first chamber).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 38, 44, 48-49, 53 and 57 are rejected under 35 U.S.C. 103(a) as being obvious over Reed 2,677,906 as applied above. Reed '906 as applied above discloses all the limitations of the claims except for the second barrier material being more brittle than the first barrier material; the first fluid included nitrogen, the second chamber including a plurality of fluid channels, each of the fluid channels includes a fluid inlet port adjacent a fluid inlet port of another one of the second chamber. Reed '906 as applied above teaches that the chambers can be filled with different gases through ports/channels in the barrier material as shown in Figures 6 and 7. Reed '906 further teaches that the pressure in the second chamber can vary over the length of the insole. Therefore, it would have been obvious, to one of ordinary skill in the art at the time the invention was made, to make the chambers with channels to aid in filling the chambers with different pressures, making sure the air only enters into the desired chamber at the desired pressure.

Allowable Subject Matter

6. Claims 36, 39, 41-43, 51, 54 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

7. Claims 55-56 are allowed over the prior art of record.


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Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anthony Stashick whose telephone number is (571) 272-4561. The examiner can normally be reached on Monday through Thursday from 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Anthony Stashick
Primary Examiner
Art Unit 3728

ADS